

SERVICE DATE – MARCH 19, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35715 (Sub-No. 1)

NORFOLK SOUTHERN RAILWAY COMPANY—TEMPORARY TRACKAGE RIGHTS  
EXEMPTION—GRAND TRUNK WESTERN RAILROAD COMPANY AND WISCONSIN  
CENTRAL LTD.

Digest:<sup>1</sup> This decision authorizes the expiration of certain Board approved rights by one carrier to operate over the lines of another carrier, even though such rights typically continue indefinitely.

Decided: March 13, 2013

By petition filed on January 28, 2013, Norfolk Southern Railway Company (NSR) requests that the Board partially revoke the class exemption to permit the trackage rights arrangement exempted in Docket No. FD 35715<sup>2</sup> to expire 24 months after the commencement

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> In that docket, on January 28, 2013, NSR filed a verified notice of exemption under the Board's class exemption procedures at 49 C.F.R. § 1180.2(d)(7). The notice addressed an agreement in which Grand Trunk Western Railroad Company and Wisconsin Central Ltd. (collectively, CN) granted temporary overhead trackage rights to NSR over the CN rail lines located: (1) between CN's connection with NSR at or near milepost 99.5 in South Bend, Ind., and at or near milepost 36.1 in Griffith, Ind., on CN's South Bend Subdivision, a distance of approximately 63.4 miles; and (2) between milepost 36.1 in Griffith and CN's Kirk Yard at or near milepost 45.4 in Gary on CN's Matteson Subdivision, a distance of approximately 9.3 miles. See Norfolk S. Ry.—Temporary Trackage Rights Exemption—Grand Trunk W. R.R., FD 35715 (STB served Feb. 13, 2013). NSR states that this notice was not filed under the Board's class exemption for temporary trackage rights at 49 C.F.R. § 1180.2(d)(8) because the agreement contemplates that the temporary trackage rights will be in effect for more than one year. See 49 C.F.R. § 1180.2(d)(8) ("Acquisition of temporary trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers that are . . . scheduled to expire on a specific date not to exceed 1 year from the effective date of the exemption."). At that time, NSR also filed for the instant partial revocation of the class exemption in this proceeding. In the February 13, 2013 notice, the Board stated that it would address that request in a subsequent decision, which it is doing here.

date of the agreement, or the date that the Gary City Track Connection, which is located at or near Gary, Ind., is completed and in use, whichever comes first.

NSR states that the purpose of the trackage rights arrangement is to allow NSR to interchange with CN at CN's Kirk Yard in Gary during the construction of the Gary City Track Connection.

## DISCUSSION AND CONCLUSION

Although NSR and CN have expressly agreed on the duration of the proposed temporary trackage rights arrangement, trackage rights approved under the class exemption at 49 C.F.R. § 1180.2(d)(7) typically remain effective indefinitely, regardless of any contract provisions. Occasionally, trackage rights exemptions have been granted for a limited time period rather than in perpetuity. See Union Pac. R.R.—Temporary Trackage Rights Exemption—BNSF Ry., FD 34554 (Sub-No. 17) (STB served Nov. 14, 2012).

Under 49 U.S.C. § 10502, the Board may exempt a person, class of persons, or a transaction or service, in whole or in part, when it finds that (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101, and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

NSR's temporary trackage rights were already authorized under the class exemption at 49 C.F.R. § 1180.2(d)(7). See R.R. Consolidation Procedures—Trackage Rights Exemption, 1 I.C.C. 2d 270 (1985). Granting partial revocation in these circumstances will promote the rail transportation policy by eliminating the need to file a second pleading seeking discontinuance when the agreement expires, thereby promoting rail transportation policy goals at 49 U.S.C. § 10101(2), (4), (5), (7) and (15).<sup>3</sup> Moreover, limiting the term of the trackage rights is consistent with the limited scope of the transaction previously exempted, and will have no adverse impact on shippers on the line, because the trackage rights that are the subject of the exemption are solely to allow NSR to interchange with CN at CN's Kirk Yard in Gary during the construction of the Gary City Track Connection. Therefore, we will grant the petition and permit the trackage rights exempted in Docket No. FD 35715 to expire 24 months after the commencement date of the agreement, or the date that the Gary City Track Connection is completed and in use, whichever comes first.

In order to provide the statutorily mandated protection to any employee adversely affected by the discontinuance of trackage rights, we will impose the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho (Oregon Short Line), 360 I.C.C. 91 (1979).

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<sup>3</sup> In contrast, exemptions for temporary trackage rights of one year or less do not require a subsequent filing for discontinuance. See 49 C.F.R. § 1180.2(d)(8).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition for partial revocation is granted.
2. Under 49 U.S.C. § 10502, the trackage rights described in Docket No. FD 35715 are exempted, as discussed above, to permit the trackage rights to expire 24 months after the commencement date of the agreement, or the date that the Gary City Track Connection is completed and in use, whichever comes first, subject to the employee protective conditions set forth in Oregon Short Line, 360 I.C.C. 91 (1979).
3. Notice will be published in the Federal Register on March 19, 2013.
4. This decision is effective on April 18, 2013. Petitions to stay must be filed by March 29, 2013. Petitions for reconsideration must be filed by April 8, 2013.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.